

United States Circuit Court of
Appeals for the Ninth District

B. J. RUCKER,

Petitioner,

vs.

DAVID H. BLAIR, Commissioner of
Internal Revenue,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

This is a proceeding to review the decision of the United States Board of Tax Appeals against the petitioner for the year 1918.

The facts as found by the Board necessary to a consideration of this review are as follows:

“B. J. Rucker was married in December, 1904, and he has lived continuously with his wife since that time. At the time of his marriage Rucker owned a one-half interest in the co-partnership of Rucker Brothers, the assets of which consisted of lands and town lots and some shares of stock in the Rucker Bank. Rucker Brothers were engaged in the real es-

tate business at the time of Rucker's marriage, but in 1907 or 1908 the firm entered into the logging and sawmill business. The lands and town lots owned by the partnership at the time of Rucker's marriage were nonproductive properties from which there has been no income from the time of his marriage to the present time. In fact they have paid in taxes several times what the property would sell for today.

"The profits earned by the partnership of Rucker Brothers have come from enterprises they have engaged in, such as timber and sawmill and logging operations for which the firm borrowed money and started. They (17) have bought most of their timber on the installment plan, making only a small initial payment therefor.

"Rucker has kept no record of the property he had at the time he was married, nor of what he has accumulated subsequently to marriage.

"Rucker Brothers purchased a quantity of timber from the Puget Mill Company in 1917 at a total purchase price of \$625,000 for which they paid \$5,000 in cash and the balance of \$620,000 in promissory notes extending over a period of several years, all of which notes were signed by W. J. and B. J. Rucker for the partnership. A portion of that timber was later sold at a profit of \$80,000. The portion of that timber that was not sold was cut and sawed at their own sawmill and was paid therefor as it was cut and removed.

"During the period 1907 to 1916 the firm of Rucker Brothers borrowed several sums of money for use in the partnership.

"All of Rucker's property at the time of his marriage was his equity in the partnership and

all of his income has been from the partnership distributions.

“Rucker Brothers filed an amended partnership return for the year 1918, showing therein \$95,699.27 as the total distributive income of the partnership for that year divided \$47,849.64 and \$47,849.63 for W. J. and B. J. Rucker, respectively.

“The individual (amended) return of B. J. Rucker for 1918 shows total net income from the partnership of Rucker Brothers to be \$47,849.63, from which a contribution of \$268.73 and \$10,957.58 were deducted, the latter amount being explained on the return as “net loss on dissolving corporation entirely owned by Rucker Brother Partnership. Tulalip Company \$20,059.82, Rucker \$1,875.17, total \$21,915.17, individual claim one-half under section 214 (1) Div. (4),” leaving a net taxable income of \$36,623.32.

“The individual (amended) return of W. J. Rucker for the year 1918 shows a total net income from the partnership of Rucker Brothers of \$47,849.64 from which the same deductions were taken as in B. J. Rucker’s return with the same explanation, leaving a net taxable income for that year of \$36,623.32.

(12) The respondent determined the net income of each to be \$47,599.90.”

Transcript No. 5662, pp. 13, 14, 15.

On these facts the Board of Tax Appeals held that the Commissioner of Internal Revenue had correctly held that the entire distributive share of the income of B. J. Rucker in the partnership of Rucker Brothers was separate property as follows:

“The second allegation of error is urged by the petitioner B. J. Rucker, only, and it relates to the question of whether his distributive share of the profits of the partnership of which he is a member, constitutes community income or whether it constitutes separate income and hence taxable to himself. The facts and circumstances with respect to this issue are the same as those existing in the Appeal of B. J. Rucker, Docket No. 3509, wherein we held that the income in question was derived from his separate property and was taxable to him and we are therefore bound by our decision in that case with respect to the issue in the instant case.

Transcript of Record, p. 17.

The sole question to be determined by the court is whether the facts as found by the Board of Tax Appeals support the decision of that Board.

Petitioner seeking a reversal of that decision has brought the case to this court for review.

SPECIFICATIONS OF ERROR

1. The Board erred in holding that all of said petitioner's distributive share of the income of Rucker Brothers for 1918 was the separate income of petitioner.

2. The Board erred in failing to hold that all of said petitioner's distributive share of the income of Rucker Brothers for 1918 was the community property of said petitioner and his wife.

3. The Board erred in its conclusions.

Transcript of Record p. 21.

ARGUMENT

As the different specifications of error raise the same question they may all be discussed together.

No question of fact is involved in this proceeding. The petitioner accepts the facts as found by the Board of Tax Appeals. But he urges that the conclusions drawn from these facts by the Board of Tax Appeals are erroneous.

The question involved is the proper construction of the community property statutes of the State of Washington.

The statutes pertinent to the inquiry are as follows:

Section 6890 of Remington's Compiled Statutes: Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterward by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will, such property without the wife joining in such management, alienation, or encumbrance, as fully and to the same effect as though he were unmarried.

Section 6891: The property and pecuniary rights of every married woman at the time of her marriage, or afterward acquired by gift, devise, or in-

heritance, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property, to the same extent and in the same manner that her husband can, property belonging to him.

Section 6892: Property, not acquired or owned as prescribed in the next two preceding sections, acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof.

Sections 6890 and 6891 define separate property and Section 6892 provides that all property not acquired or owned as prescribed by the next two preceding sections acquired after marriage shall be community property.

The profits were made from timber bought on credit during the existence of the marriage community of petitioner and his wife.

23.)

Notes were given to evidence this indebtedness, signed by W. J. and B. J. Rucker for Rucker Bros. (*Transcript*, p. 14).

From these facts the appellants contend that all of the income reported by the said B. J. Rucker and wife was bonafide community income and was properly reported one-half as the income of B. J. Rucker and one-half as the income of his wife, Ruby Rucker.

It is the well established rule that the Federal Courts follow the State Courts in the construction of State Statutes.

“Decisions by the court of last resort of a state construing state laws, on the faith of which a subsequent contract is made, will be adopted and applied by the Supreme Court of the United States in considering the nature of the contract right relied upon.

“State decisions establishing a rule of property will be followed by the Supreme Court of the United States when called upon to interpret the state law, if it is possible to do so.

“The community system of property was not destroyed, so as to make it impossible for community or common property to exist, by Wash. act 1893, giving the administration and disposition of the community property to the husband.”

Warburton v. White, 176 U. S. 484, 44 Law Ed. 555.

Under the laws of the State of Washington as construed by the Supreme Court the following legal conclusions are firmly established.

1. That all property acquired by husband and

wife or either of them during marriage is presumed to be community property and the burden of proof is on the person claiming the same to be separate property.

2. The property acquired by husband and wife or either of them during the marriage relation on borrowed capital is community property.

3. That separate property of either husband or wife so mixed or intermingled with the community as to be incapable of accurate segregation becomes community property.

4. That the rents, issues and profits of community property and the earnings of the husband, and of the wife while living with the husband, is community property and of course community income.

The first proposition is sustained by an unbroken line of decisions from

Lemon vs. Watterman, 2 W. T. 485.

To Marston vs. Rue, 92 Wash. 129.

The following authorities sustain the second proposition.

Yesler vs. Hochstettler, 4 Wash. 349.

Main vs. Scholl, 20 Wash. 205.

Fielding vs. Ketler, 86 Wash. 194.

Graves vs. Columbia Underwriters, 83 Wash. 198.

As to the third proposition the finding of fact is as follows:

“Rucker has kept no record of the property he had at the time he was married nor of what he has accumulated subsequently to marriage.”

(*Transcript p. 14*).

“In regard to the money in the bank, it is impossible to segregate that as to its sources. Its separate and community natures have become so confused that the court cannot apportion them, and the favor with which community property is regarded and the presumptions in favor of it are such that we must agree with trial court that these funds in bank are the property of the community and not subject to the appellant’s judgment.”

119 Wash. 287, *Jacobs vs. Hoitt*.

“So we have held that, where separate funds have been so commingled with the community funds as to make it impossible to trace the former or tell which are separate and which are community funds, all funds or property into which they have been invested belong to the community. *Yesler vs. Hochstettler*, 4 Wash. 349, 30 Pac. 398; *Doyle vs. Langdon*, 80 Wash. 175, 141 Pac. 352; *In re Buchanan’s Estate*, 89 Wash. 172, 154 Pac. 129. Such is the situation here and we hold that the money and the property into which it was vested belonged to the community.”

In re estate of Carmack, 133 Wash. 374.

“When either spouse claims that his separate property has been commingled with community funds he must support by affirmative proof his claim to distinct articles or parcels or to a share of some mass or parcel, or he must fail.”

McKay on Community Property, Sec. 323
(Sec. Ed.)

As to the fourth proposition:

“Property acquired by either spouse during the coverture, otherwise than by gift, bequest, devise or descent, is presumptively community property.”

Union Sav. & Trust Co., vs. Manney, 101 Wash. 279.

“It is conceded that the property in dispute was acquired and improved by community funds *earned* after marriage. The statute makes such property community property.”

In re Parker's estate, 115 Wash. 60.

The interest of petitioner in this timber, under an unbroken line of decisions, was the community property of himself and wife and any profit realized therefrom was community income of petitioner and wife.

The decision of the Board of Tax Appeals on this branch of the case is based solely on the decision of the Supreme Court of the State of Washington, *In re: Brown estate*, 124 Wash. 273. The *Brown* case was decided on the authority of *Jacobs vs. Hoitt* 119 Wash. 283 and *Finn vs. Finn*, 106 Wash. 137. In both of these cases the facts were entirely different from the facts of the case at bar. In *Finn vs. Finn* the property was purchased and partly paid for by the wife with separate funds and the balance secured by a joint note and mortgage upon her separate property. These facts were held to

overthrow the presumption of community property even though the property was acquired during the marriage relation.

In *Jacobs vs. Hoitt* the holding of the court was that the status of the bakery plant and business acquired before marriage by the use of separate funds and the pledging of separate credit is separate property. In that case Mr. Jacobs signed the note in question before his marriage.

In the case at bar, Mr. Rucker signed the note some 10 to 15 years after his marriage, and a note signed by the husband during the existence of the marriage relation is presumptively an obligation of the community.

“Where a promissory note is executed by the husband as principal, it raises a presumption in favor of the community character of the debt.”

Reed vs. Loney, 22 Wash. 433.

Way vs. Lyric Theatre Co., 79 Wash. 275.

Peter vs. Hansen, 86 Wash. 413.

Horton vs. D. K. Banking Co., 15 Wash. 399.

SUMMARY

Under the Statutes of the State of Washington, as construed by the Supreme Court of that State, the profits realized on this timber was community property.

The Federal Courts as above shown will follow

the construction placed upon State Statutes by the highest court of the State. The authorities relied upon the Board in rendering the decision adverse to petitioner do not support the conclusion placed upon them by the Board.

The cases relied upon by the Board were decided upon an entirely different state of facts than exist in the case at bar.

The decision is manifestly erroneous and therefore should be reversed.

Respectfully submitted,

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